



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0561]

RIN 1625-AA09

Drawbridge Operation Regulation; Upper Mississippi River, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule that governs the draws of all bridges between Lock and Dam No. 14, mile 493.3, and Lock and Dam No. 10, mile 615.1, on the Upper Mississippi River by adding a 24-hour notice requirement for openings during the winter season. This proposed rule would allow the drawbridges to remain in the closed-to-navigation position for extended periods allowing the owners of the drawbridges to perform preventive maintenance that is essential to the safe operation of the drawbridges. This proposed rule would allow for flexibility in beginning these special operating schedules each year based on the arrival of winter weather.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0561 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, e-mail Eric.Washburn@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

For 7 years the Coast Guard has issued temporary deviations requiring 24 hours advance notice to open for the three drawbridges between Lock and Dam No. 14, mile 493.3, and Lock and Dam No. 10, mile 615.1, on the Upper Mississippi River. The temporary deviations allowed the bridge owners to perform preventive maintenance during the winter season when there is less impact on navigation. Most recently, the temporary deviations for 2015 were published in the Federal Register in December, 2015 as follows: “Drawbridge Operation Regulation; Upper Mississippi River, Clinton, IA” and “Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA” both published on December 4, 2015 (80 FR 75811); and “Drawbridge Operation Regulation; Upper Mississippi River, Sabula IA” published on December 21, 2015 (80 FR 79260). The local mariners in this area have

complied with these 24-hour advance notice deviations. Through this rule, under the authority in 33 U.S.C. 499 and 33 CFR 117.8, the Coast Guard is proposing to make these temporary deviations part of a permanent regulation. The Coast Guard proposes to do this by including the bridges between Lock and Dam No. 14 and Lock and Dam No. 10 in the regulation for specific requirements under 33 CFR 117.671(a), allowing the bridges to open on signal if at least 24 hours advance notice is given between on/or about December 15 through the last day of February each year. Through the same authorities, this rule proposes an amendment to 117.671(a) and (b) to change the beginning date for the special operating schedules for all drawbridges listed under this regulation.

The purpose of this proposed rulemaking is to eliminate the need for bridge owners to request a temporary deviation each year for the winter season in order to perform preventative maintenance that is essential to the safe operation for the drawbridges. Additionally, the proposed date change would allow flexibility in when to begin the special operating schedules each year based on the arrival of winter weather.

There are three bridges affected by this proposed change. The Clinton Railroad Drawbridge, mile 518.0, at Clinton, IA, provides a vertical clearance of 18.7 feet above normal pool in the closed-to-navigation position, the Sabula Railroad Drawbridge, mile 535.0, at Sabula, IA, provides a vertical clearance of 18.1 feet above normal pool in the closed-to-navigation position, and the Illinois Central Railroad Drawbridge, mile 579.9, at Dubuque, IA, provides a vertical clearance of 19.9 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted.

III. Discussion of Proposed Rule

This proposed rulemaking would change the operating schedule for three bridges by amending the regulations governing the Upper Mississippi River drawbridge operating requirements under 33 CFR 117.671(a) to include these bridges. Currently, this special operating schedule applies to the draws of all bridges on the Upper Mississippi River from Lock and Dam No. 10, mile 615.1 to Lock and Dam No. 2, mile 815.2. As proposed, the special operating schedule would be amended to include the draws of three additional bridges located between Lock and Dam No. 14, mile 493.3 to Lock and Dam No. 10, mile 615.1. This proposed rule would also change the language of 117.671(a) and (b) to begin the special operating schedules on or about December 15 each year instead of on December 15 each year. A notice of enforcement would be issued each year indicating the start date for the special operating schedule. The bridges that would be included in this amended special local regulation are the Clinton Railroad Drawbridge, mile 518.0, at Clinton, IA, the Sabula Railroad Drawbridge, mile 535.0, at Sabula, IA, and the Illinois Central Railroad Drawbridge, mile 579.9, at Dubuque, IA. Currently these bridges open on signal. This change would require the bridges to open on signal if at least 24 hours advance notice is given beginning on or about December 15 and lasting through the last day of February each year.

Winter conditions, such as ice on the Upper Mississippi River, coupled with annual closure of various lock and dams between mile 493.3 and 615.1, will preclude any significant navigation demands for the drawspan openings. There are no alternate routes for vessels transiting this section of the Upper Mississippi River and the bridges cannot open in case of emergency during preventative maintenance operations; the drawbridges would open if at

least 24 hours advance notice is given. The regulatory text and changes we are proposing appear at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the availability for vessels to transit the bridge provided advanced notice is given. Moreover, the advanced notice requirement will be during the winter months, which is a time of year when vessel traffic is at its lowest as has been done in past years utilizing temporary deviations to provide for the change in bridge openings.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it

has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42

U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION

CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security
Delegation No. 0170.1.

2. Revise § 117.671 to read as follows:

§ 117.671 Upper Mississippi River.

- (a) The draws of all bridges between Lock and Dam No. 14, mile 493.3, and Lock and Dam No. 2, mile 815.2, shall open on signal; except that, from on or about

December 15 through the last day of February, the draws shall open on signal if at least 24 hours notice is given.

(b) The draws of all bridges between Lock and Dam No. 2, mile 815.2 and Lock and Dam No. 1, mile 847.6, shall open on signal; except that, from on or about

December 15 through the last day of February, the draws shall open on signal if at least 12 hours notice is given.

Dated: December 22, 2016

D. R. Callahan

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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